

Items such as vitamins or dietary supplements may be considered foods and may be taxed at either the high or low rate depending upon the nature of the establishment selling the vitamins. See 86 Ill. Adm. Code 130.310. (This is a GIL).

August 22, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 29, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY is proud to announce that our company is growing and so is our product selections. In addition, we are having new variety of different products. In order for us to comply with the State Sales and Used Tax Laws, we are sending a copy of our product's labels with the contents of the ingredients for your review. The labels included are:

- NAME 14.3oz (Dietary Supplement)
- NAME 12.7oz (Dietary Supplement)
- NAME 1.19 lbs (Dietary Supplement)
- NAME 6.76 fl. oz (Dietary Supplement)
- NAME 450 g (Dietary Supplement)
- NAME 600 g (Dietary Supplement)
- NAME 360 g (Dietary Supplement)
- NAME 360 g (Dietary Supplement)

Our products are marketed as dietary and nutritional supplements that are presented in a liquid, powder and pills form.

Please review each of our new products and determine the tax rate according to the tax laws. We would also like to know if these products are considered taxable or sales tax exempt.

We will wait for your prompt response. If you have any questions please feel free to contact me.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the high rate. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice.

A medicine or drug is defined as any pill, powder, potion, salve, or other reparation intended by the manufacturer for human use and that purports on the label to have medicinal qualities. Generally, if vitamins or dietary supplements are intended by the manufacturer for human use and purport on the label to have medicinal qualities, such vitamins or dietary supplements are considered to be drugs and are taxed at the low rate of tax. However, since not many vitamins or dietary supplements are likely to have medicinal claims, the vitamins may be considered to be a food. See Section 130.310(b)(1).

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts.

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Soft drinks are always taxed at the high rate. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.